

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

MICHAEL E. HUBER,
 Petitioner,

vs.

PALMER, *et al.*,
 Respondents.

3:11-cv-00516-LRH-VPC

ORDER

This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. By order filed August 11, 2011, this Court dismissed the petition based on untimeliness and failure to exhaust state court remedies. (ECF No. 3). Judgment was entered the same date. (ECF No. 5). On October 6, 2011, petitioner filed a notice of appeal. (ECF No. 6). The Court construes the notice of appeal as an application for a certificate of appealability.

In order to proceed with his appeal, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9th Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9th Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9th Cir. 2001). Generally, a petitioner must make “a substantial showing of the denial of a constitutional right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court's

1 assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In
2 order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are
3 debatable among jurists of reason; that a court could resolve the issues differently; or that the
4 questions are adequate to deserve encouragement to proceed further. *Id.*

5 In the present case, the Court dismissed the petition based on untimeliness and failure to
6 exhaust state court remedies. No reasonable jurist could conclude that the Court’s order was in error.
7 Petitioner is not entitled to a certificate of appealability.

8 **IT IS THEREFORE ORDERED** that the application for a certificate of appealability (ECF
9 No. 6) is **DENIED**.

10 **IT IS FURTHER ORDERED** that the Clerk shall send a copy of this order to the United
11 States Court of Appeals for the Ninth Circuit.

12 Dated this 14th day of October, 2011.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE